

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

STEVE KASSAB,

Plaintiff,

v.

SAN DIEGO POLICE DEPARTMENT, a  
municipal corporation, et al.,

Defendants.

Case No. 07cv1071 WQH (WMc)

**ORDER ON PRODUCTION OF  
DOCUMENTS FOLLOWING *IN*  
CAMERA REVIEW**

**I.**

**INTRODUCTION AND PROCEDURAL HISTORY**

On April 29, 2008, Plaintiff filed a motion for pretrial discovery or, in the alternative, for an *in camera* inspection of documents. [Doc. 50-2, 2:16-24.] After receiving a brief extension, Defendants filed an opposition on June 19, 2008. [Doc. Nos. 55, 56 and 57.] Plaintiff filed a reply in support of his motion on June 24, 2008. [Doc. No. 58.] On July 3, 2008, the Court issued an Order granting in part and denying part Plaintiff's motion for discovery and directing the parties to meet and confer as well as lodge with Judge McCurine's chambers a revised privilege log and a copy of the disputed documents for *in camera* review. [Doc. No. 59.] The privilege log and disputed documents were lodged with Judge McCurine's chambers on August 15, 2008. The Court has completed its *in camera* review and issues the following order.

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1 **II.**

2 ***IN CAMERA* REVIEW**

3 As noted above, Defendants have submitted for *in camera* review general personnel and  
4 training files as well as Internal Affairs files concerning the arrest of Plaintiff on July 13, 2006,  
5 one of two arrests which form the basis of the claims in Plaintiffs' first amended complaint.

6 **A. Internal Affairs Records Concerning Investigations Into Citizen Complaints Made**  
7 **By Plaintiff Are Not Protected From Disclosure By Official Information Privilege**

8 "Federal common law recognizes a qualified privilege for official information." *Miller v.*  
9 *Pancucci*, 141 F.R.D. 292, 299 (C.D. Cal. 1992). The personnel files of government employees  
10 have been considered official information for purposes of the common law privilege. *Sanchez v.*  
11 *City of Santa Ana*, 936 F.2d 1027, 1033 (9<sup>th</sup> Cir. 1990.) Courts engage in a balancing test to  
12 determine whether personnel files are privileged and thereby protected from disclosure. *Miller*,  
13 141 F.R.D. at 300. Specifically, "courts must weigh potential benefits of disclosure against  
14 potential disadvantages; if the latter is greater, the official information privilege may bar  
15 discovery." *Id.* The balancing test is pre-weighted in favor of disclosure. *Kelly v. City of San*  
16 *Jose*, 114 F.R.D. 653, 656 (N.D. Cal. 1987.)

17 In order to properly invoke the privilege and trigger the Court's consideration of the  
18 materials at issue, the party opposing disclosure must make a substantial threshold showing by  
19 submitting a declaration from a responsible official with personal knowledge of the police  
20 department's internal investigatory system. *See Soto v. City of Concord*, 162 F.R.D. 603, 613  
21 (N.D. Cal. 1995.) (citing *Kelly*, 114 F.R.D. at 670.) Defendants have met the threshold by  
22 submitting the declaration of David Ramirez, the Executive Assistant Chief of Police for the San  
23 Diego Police Department. Chief Ramirez is responsible for the oversight and administration of  
24 the Internal Affairs Unit. [See Ramirez Decl., 1:21-25.]

25 The Court has reviewed *in camera* the documents lodged by Defendants and finds that in  
26 this case, which concerns allegations of discrimination, retaliation, false arrest and excessive  
27 force, the benefits of providing Plaintiff with an opportunity to review relevant internal affairs  
28 investigations into the officers' conduct with respect to the July 13, 2006 arrest, as well as other

1 interactions with Kassab, outweigh the Police Department's interest in maintaining the  
2 confidentiality of the Internal Affairs records at issue. Indeed, confidentiality is not a significant  
3 factor in the Court's balancing exercise in this case because the internal affairs files at issue were  
4 created in response to citizen complaint forms submitted by Plaintiff himself. Moreover,  
5 Defendants' interests are especially outweighed in light of the federal courts' pre-weighting in  
6 favor of disclosure and this Court's determination that disclosure will occur pursuant to  
7 protective order as explained below. Accordingly, the following internal affairs documents shall  
8 be produced:

9 CM-IA-00002

10 CM-IA-00006 to CM-IA-00008

11 CM-IA-00011 to CM-IA-00015

12 CM-IA-00018 to CM-IA-00019

13 CM-IA-00027 to CM-IA-00036

14 CM-IA-00040 to CM-IA-00054

15 CM-IA-00056 to CM-IA-00057

16 CM-IA-00061 to CM-IA-00066

17 CM-IA-00208 to CM-IA-00251

18 CM-IA-00254 to CM-IA-00266

19 CM-IA-00274 to CM-IA-00293

20 CM-IA-00295 to CM-IA-00318

21 CM-IA-00341 to CM-IA-00343

22 CM-IA-00357 to CM-IA-00362

23 CM-IA-00365 to CM-IA-00369

24 CM-IA-00372 to CM-IA-00373

25 CM-IA-003765 to CM-IA-00376

26 CM-IA-00380 to CM-IA-00381

27 RH-SS-IA-00007 to RH-SS-IA-00051

28 RH-SS-IA-00055 to RH-SS-IA-00057

1 RH-SS-IA-00060 to RH-SS-IA-00063

2 RH-SS-IA-00067 to RH-SS-IA-00070

3 RH-SS-IA-00076 to RH-SS-IA-00085

4 RH-SS-IA-00089 to RH-SS-IA-00101

5 RH-SS-IA-00103 to RH-SS-IA-00104

6 RH-SS-IA-00106 to RH-SS-IA-00108

7 RH-SS-IA-00110

8 RH-SS-IA-00113 to RH-SS-IA-00124

9 RH-SS-IA-00133 to RH-SS-IA-00175

10 RH-SS-IA-00214 to RH-SS-IA-00219

11 RH-SS-IA-00222 to RH-SS-IA-00226

12 RH-SS-IA-00228 to RH-SS-IA-00229

13 RH-SS-IA-00231 to RH-SS-IA-00232

14 RH-SS-IA-00236 to RH-SS-IA-00239

15  
16 **B. Officer Training Certificates Are Relevant And Shall Be Produced**

17 Under Federal Rules of Civil Procedure, parties may obtain discovery of material that is  
18 (1) “not privileged” and (2) “relevant to the subject matter involved in the pending action.” Fed.  
19 R. Civ. P. 26(b)(1). Moreover, “[t]he information sought need not be admissible at the trial if the  
20 information sought appears reasonably calculated to lead to the discovery of admissible  
21 evidence.” *Id.*

22 A relevant matter is “any matter that bears on, or that reasonably could lead to other  
23 matters that could bear on, any issue that is or may be in the case.” *Soto v. City of Concord*, 162  
24 F.R.D. 603, 617 (N.D. Cal. 1995) (quoting *Oppenheimer Fund, Inc. v. Sanders*, 437 U.S. 340,  
25 351 (1978).) Items typically found in personnel files, such as records concerning training and  
26 performance, have been held to be relevant on the issues of credibility, notice to the employer,  
27 ratification by the employer, motive of the officers and malicious intent. *See Soto v. City of*  
28 *Concord*, 162 F.R.D. at 613 (citing *Hampton v. City of San Diego*, 147 F.R.D. 227, 229 (S.D.

Cal. 1993).) Accordingly, all documents identified in Defendant's privilege logs as "Training Certificate", "Certificate of Completion" or "Certificate of Training" shall be produced in full.

### C. General Personnel Files Are Protected By A Right of Privacy

Federal courts generally recognize a right of privacy that can be raised in response to discovery requests. *Johnson ex rel Johnson v. Thompson*, 971 F.2d 1487, 1497 (10<sup>th</sup> Cir. 1992) (denying discovery of names of participants in a medical study due to privacy interests of the individual participants). The party whose privacy is affected may object or seek a protective order. *Laxalt v. McClatchy*, 809 F.2d 885, 889 (D.C. Cir. 1987). Resolution of a privacy objection or request for protective order requires a balancing of the need for the particular information against the privacy right asserted. *Cook v. Yellow Freight System, Inc.*, 132 F.R.D. 548, 550-551 (E.D. Cal. 1990) (balancing targeted individual's right of privacy against public's need for discovery in employment discrimination case.) With respect to the disclosure of police files, courts have recognized that privacy rights are not inconsequential. *Kelly v. City of San Jose*, 114 F.R.D. 653, 650 (N.D. Cal. 1987).

In the instant civil rights action, Plaintiff alleges causes of action for false arrest and imprisonment, assault, retaliation, intentional infliction of emotional distress and use of excessive force arising out two separate arrests of Plaintiff on July 13, 2006 and on December 19, 2007. [See Plaintiff's First Amended Complaint "FAC" 8:24-9:3, 14:18-15:8.] After an *in camera* review of the files, the Court determines that the majority of the police officers' personnel files are irrelevant to Plaintiff's claims. See Fed. R. Civ. P. 26(b) (establishing discoverable nature of matter that is relevant and not privileged.) Moreover, Plaintiff has no need for the sensitive personal information commonly found in personnel files such as home address, telephone number, social security number, emergency contact information, and salary history. Accordingly, the officer personnel files in their entirety are not discoverable. The Court notes that training certificates, which are a subset of the officers' broad personnel files, have already been found by the Court to be discoverable and shall be produced in full. (See Section II (B) *supra*.)

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1 **III.**

2 **DISCLOSURE SHALL OCCUR SUBJECT TO PROTECTIVE ORDER**

3 Courts have fulfilled a plaintiff's need for discovery while protecting a defendant's  
4 privacy by ordering the production of documents subject to a protective order limiting the access  
5 to the material at issue to plaintiff, his counsel and those experts who require such information to  
6 formulate an opinion. *Soto v. City of Concord*, 162 F.R.D. 603, 617 (N.D. Cal. 1995.) Defendant  
7 has requested a narrowly-tailored protective order should the Court order the production of  
8 documents. (*See* Ramirez Decl., 5:10-15.)

9 The Court finds that a protective order will serve the interests of both parties in  
10 facilitating discovery and yet protecting the privacy of the parties involved. Therefore, the Court  
11 orders the parties to enter into a protective order governing the documents the Court has ordered  
12 to be disclosed. The parties shall finalize said protective order no later than **October 6, 2008**.  
13 Service of the documents ordered disclosed shall occur within **ten (10) calendar days** after the  
14 Court signs the protective order. All documents produced must be bates-stamped. Every page of  
15 every document must have a number.

16 **IV.**

17 **CONCLUSION**

18 In accordance with the Court's findings expressed above, Defendants are ordered to  
19 produce the following documents **pursuant to protective order:**

20 CM-IA-00002  
21 CM-IA-00006 to CM-IA-00008  
22 CM-IA-00011 to CM-IA-00015  
23 CM-IA-00018 to CM-IA-00019  
24 CM-IA-00027 to CM-IA-00036  
25 CM-IA-00040 to CM-IA-00054  
26 CM-IA-00056 to CM-IA-00057  
27 CM-IA-00061 to CM-IA-00066  
28 CM-IA-00208 to CM-IA-00251  
CM-IA-00254 to CM-IA-00266  
CM-IA-00274 to CM-IA-00293  
CM-IA-00295 to CM-IA-00318  
CM-IA-00341 to CM-IA-00343  
CM-IA-00357 to CM-IA-00362  
CM-IA-00365 to CM-IA-00369  
CM-IA-00372 to CM-IA-00373  
CM-IA-003765 to CM-IA-00376  
CM-IA-00380 to CM-IA-00381

1 RH-SS-IA-00007 to RH-SS-IA-00051  
2 RH-SS-IA-00055 to RH-SS-IA-00057  
3 RH-SS-IA-00060 to RH-SS-IA-00063  
4 RH-SS-IA-00067 to RH-SS-IA-00070  
5 RH-SS-IA-00076 to RH-SS-IA-00085  
6 RH-SS-IA-00089 to RH-SS-IA-00101  
7 RH-SS-IA-00103 to RH-SS-IA-00104  
8 RH-SS-IA-00106 to RH-SS-IA-00108  
9 RH-SS-IA-00110  
10 RH-SS-IA-00113 to RH-SS-IA-00124  
11 RH-SS-IA-00133 to RH-SS-IA-00175  
12 RH-SS-IA-00214 to RH-SS-IA-00219  
13 RH-SS-IA-00222 to RH-SS-IA-00226  
14 RH-SS-IA-00228 to RH-SS-IA-00229  
15 RH-SS-IA-00231 to RH-SS-IA-00232  
16 RH-SS-IA-00236 to RH-SS-IA-00239

17 and;

18 all documents identified in Defendant's privilege logs as "Training Certificate",  
19 "Certificate of Completion" or "Certificate of Training".

20 The parties shall finalize a protective order no later than **October 6, 2008**. Service of  
21 the documents ordered disclosed shall occur within **ten (10) calendar days** after the Court signs  
22 the protective order.

23 It is further ordered that the telephonic Discovery Conference presently set for  
24 **September 23, 2008** is **VACATED**.

25 **IT IS SO ORDERED.**

26 Dated: September 19, 2008



Hon. William McCurine, Jr.  
U.S. Magistrate Judge, U.S. District Court

27 COPY TO:

28 HON. WILLIAM Q. HAYES, UNITED STATES DISTRICT JUDGE  
PLAINTIFF *PRO SE* IN CASE NO. 07-CV-1071  
ALL PARTIES AND COUNSEL OF RECORD